

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q78138	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/697,125	October 31, 2003	
	First Named Inventor		
	Michel CHEVANNE		
	Art Unit	Examiner	
	2446	Shaq Taha	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number 60,645</p> <p style="text-align: right;">_____/Theodore C. Shih/ Signature</p> <p style="text-align: right;">_____ Theodore C. Shih Typed or printed name</p> <p style="text-align: right;">_____(202) 293-7060 Telephone number</p> <p style="text-align: right;">_____ November 10, 2008 Date</p>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q78138

Michel CHEVANNE, et al.

Appln. No.: 10/697,125

Group Art Unit: 2446

Confirmation No.: 9445

Examiner: Shaq Taha

Filed: October 31, 2003

For: A DEVICE AND METHOD FOR CONTROLLING NETWORK EQUIPMENT
MANAGEMENT DATA, FOR A COMMUNICATIONS NETWORK MANAGEMENT
SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated July 9, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue. As of the Advisory Action mailed October 30, 2008, claims 1, 5-11, and 15 stand rejected under 35 U.S.C. 102(e) as being allegedly anticipated by Gandhi et al. (U.S. 2005/0267935). Claims 2, 3, 4, 12-14, and 16-20 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gandhi in view of Chobotaro et al. (U.S. 2003/0202408). Claim 21 stands rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gandhi in view of Chobotaro, and further in view of Bowman-Amuah et al. (U.S. 6,611,867).

Claim Rejections - 35 U.S.C. 102(e)

Claim 1

Applicants respectfully submit that claim 1 is not anticipated by Gandhi. Specifically, the multiple function device 100 of Gandhi fails to teach or suggest “a memory” which stores “loaded management data modules” as recited in claim 1. In Gandhi, user control points 104 and controlled device 106 are components of the multiple function device 100. (See FIG. 1). The user control point initiates communications and receives events from controlled devices. (See paragraph [0128]). In operation, however, the user control point only receives one description document per control device. (See paragraphs [0075] and [0132]). Each description document is specific to each control device and each control device only provides the description document of itself. (See paragraph [0075]). Thus, Gandhi fails to teach or suggest “a memory” which stores “loaded management data modules” as recited in claim 1.

Furthermore, in the Advisory Action, the Examiner asserts that, “Ghandi et al. teaches a module which is a component of a device such as a software program or a system that implements some functionality and can be used as a control logic to control devices in a network, [Paragraph 58].” Assuming arguendo, that the module implements some functionality, Ghandi still fails to teach or suggest that the functionality corresponds to the managing of equipment management data using previously loaded management data modules.

Accordingly, for at least the above reasons, claim 1 should be deemed allowable. Claim 11 is also patentable over the prior art for analogous reasons, as claim 11 recites similar claim elements, but in a method format. Accordingly claims 2-10 and 12-21 are also patentable over the prior art by virtue of their dependencies on claims 1 and 11, respectively as well as for their additionally recited elements.

Claim 5

Applicants respectfully submit that claim 5 is not anticipated by Gandhi. The Examiner also asserts that the bridge 120 as disclosed in FIG. 2 and paragraph [0197] of Gandhi, teaches “control means [which] **loads** management data modules **according to** at least **a first mode**...and **a second mode**...” as recited in claim 5. Gandhi, however, merely teaches that the Bridge is also a Controlled Device which **announces** Bridged Devices and local Controlled Devices independently, with appropriate unique identifiers, Description Documents and associated URLs. (See paragraph [0197]). Merely announcing bridged devices and local controlled devices, however, fails to teach or suggest that the “control means **loads** management data modules **according to** at least **a first mode**...and **a second mode**...” as recited in claim 5.

Claim Rejections - 35 U.S.C. 103(a)

Claim 2

Applicants respectfully submit that claim 2 is not anticipated by Gandhi in view of Chobotaro. The Examiner concedes that Gandhi fails to teach or suggest putting said new management data module loaded on standby so as to continue the management of said prior version of the equipment from said old management data module, until said new version of the equipment is integrated, but cites Chobotaro as allegedly curing the deficiencies of Gandhi. Applicants respectfully disagree with the Examiner’s position.

Chobotaro teaches that that the device driver may need to update its control data *whenever the device driver is initiated*. (See paragraph [0016]). Chobotaro also teaches a computer system 100 which contains a device driver. (See paragraph [0010]). Thus, in Chobotaro, the updating of the device driver pertains to only a computer system 100. Accordingly, Chobotaro fails to teach or suggest “a new management data module is loaded, associated with a **new version of equipment** which has not yet been integrated in said communications network” as recited in claim 2.

Claim 3

Applicants respectfully submit that claim 3 is not anticipated by Gandhi in view of Chobotaro. The Examiner asserts, “Gandhi et al., FIG. 2 that the remote controller 204 provides a user interface (UI) 240 that allows a user to enter control data for controlling the controlled device 206” as allegedly teaching “a device according to claim 2 wherein said standby consists firstly of allowing the management of said new version of the equipment from said new management data module, without taking account of any error messages related to its non-integration in said communications network”. Applicants respectfully disagree with the Examiner’s position.

First, FIG. 2 of Gandhi fails to teach or suggest a remote controller 204, a user interface 240, or controlled device 206. Furthermore, the controlled device 106 in FIG. 2 of Gandhi fails to teach or suggest “said standby consists firstly of allowing the management of said new version of the equipment from said new management data module, without taking account of any error messages related to its non-integration in said communications network” as recited in claim 3.

Furthermore, Gandhi teaches “Networking, in this context, describes a style of connectivity that enables any networked device, without having established a prior relationship or maintaining a persistent relationship between the devices” (see Gandhi, Paragraph [0048]), but fails to teach or suggest “to send a message to said old management data module indicating that a change of version is under way and that said old management data module must not take account of at least some of the error messages related to a conjoint management of the old and new versions of the equipment” as recited in claim 3.

Claim 4

Applicants respectfully submit that claim 4 is not anticipated by Gandhi in view of Chobotaro. The Examiner asserts that the combination of Gandhi and Chobotaro teaches “said control means which, in a case of synchronization between said new version of the equipment

and said new management data module, deletes said old management data module” as recited in claim 4. Applicants respectfully submit that one of ordinary skill in the art at the time of the presently-claimed invention would not have been motivated to combine Gandhi and Chobotaro as suggested by the Examiner because there is no suggestion of motivation for doing so in the references themselves or the knowledge available to one of ordinary skill in the art without resorting to impermissible hindsight. Chobotaro teaches updating the device driver for a single computer system. (See paragraph [0010]). Alternatively, Gandhi teaches networking of multiple devices. (See paragraph [0048]). Accordingly, Gandhi and Chobotaro teach fundamentally different systems because processes of Gandhi relate to networking *multiple* devices and processes of Chobotaro relate to device drivers of a *single* device. Thus, Gandhi and Chobotaro are inapposite because of the disparity as pointed out above, and the only possible motivation for the Examiner’s proposed combination is Applicant’s own disclosure, the reliance on which constitutes impermissible hindsight reconstruction under MPEP §2143 (see also *In re Vaeck*, 20 USPQ 1438 (Fed. Cir. 1991)).

Conclusion

In view of the foregoing, it is respectfully submitted that Claims 1-21 are allowable. Please charge any fees which may be required to maintain the pendency of this application, except for the Issue Fee, to our Deposit Account No. 19-4880.

Respectfully submitted,

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